United Nations CEDAW/C/SR.664

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
21 September 2004

Original: English

Committee on the Elimination of Discrimination against Women

Twenty-first session

Summary record of the 664th meeting
Held at Headquarters, New York, on Wednesday, 21 July 2004, at 10 a.m.

Chairperson: Ms. Açar

Contents

Implementation of article 21 of the Convention (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

04-43327 (E)

The meeting was called to order at 10.10 a.m.

Implementation of article 21 of the Convention (*continued*)

1. **The Chairperson** said that at its thirtieth session the Committee had agreed that its next general recommendation would be on article 2 of the Convention and that work thereon would commence at the present session. At an informal meeting in Utrecht, the Netherlands, in May 2004, the Committee's potential scope of the undertaking and its complexity had become very apparent. Article 2 was the most far-reaching of the Convention's articles, covering the interpretation of all the others. The Committee of course had had significant practice in using and interpreting it in its concluding comments and general recommendations. Working on a general recommendation on article 2 specifically would give it the opportunity to consolidate that practice, but also to benefit from the input of others and from the work of other human rights treaty bodies. The task would make a significant contribution to clarifying the obligations of States parties under the Convention.

2. The present discussion was the first phase of a three-phase process in preparing general recommendations. It involved a general discussion and exchange of views on the subject of the proposed general recommendation during an open meeting of the Committee. Specialized agencies and other United Nations bodies, as well as non-governmental organizations (NGOs), had been invited to participate and to prepare informal background papers as appropriate. Subsequent phases covered the modalities for preparing an initial draft, its discussion and revision by the Committee and its eventual adoption.

3. **Ms. Waldorf** (United Nations Development Fund for Women (UNIFEM)), speaking also on behalf of the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA) and the World Health Organization (WHO), said that the most important issue that should be covered in a general recommendation on article 2 was the fact that the Convention imposed obligations which extended across the State as an entirety and were binding on all branches, levels and organs of the State equally. The general recommendation should make it clear that the task of reporting on and complying with the Convention was not primarily the responsibility of States' national women's machineries, while recognizing the significant role played by national women's machineries in developing a widespread and thought-out policy of eliminating discrimination against women. It might also be helpful to underline the Committee's previous comments about the importance of strengthening national women's machineries and funding them adequately.

4. The general recommendation should stress that the term "all appropriate measures" and similar phrases in article 2 must be understood as including but not being limited to legislation, and it would be helpful if the general recommendation provided concrete direction to States on the range of non-legislative measures that might be needed. In that regard, reference might be made to previous general recommendations on violence against women and health. It would also be helpful very specifically to address the question of resource allocation by States.

5. The recommendation should indicate that article 2 required action to eliminate all forms of discrimination, and should clarify that articles 5 to 16 were indicative but not exhaustive of the obligations under the Convention. As forms of discrimination continued to evolve and social relations continued to change, it would be important for States to understand that the obligation under the Convention was extremely broad.

6. Another issue which the general recommendation should address was the fact that States' obligations extended to non-citizens as well as citizens. Article 2 did not draw a distinction between them. In a recent General Comment, the Human Rights Committee had made very clear that asylum-seekers, refugees, migrant workers and other persons, including those within the power or effective control of the forces of a State party in the context of international peacekeeping or other operations, came within the ambit of the International Convention on Civil and Political Rights.

7. A further issue which a general recommendation should address was the need to take measures to address discrimination across the life cycle. States should be helped to understand the complementary nature of human rights standards applicable to the girl child, and any misapprehension that the Convention applied only to adult women, while the Convention on the Rights of the Child was the treaty that applied to girls should be countered. Similarly, while many of the

BEST COPY AVAILABLE

specific forms of discrimination against women detailed in articles 5 to 16 of the Convention applied primarily to women in their earlier years, it was important to emphasize the need for measures to address particular forms of gender-based discrimination affecting older women, widows and unmarried women.

8. It would be very helpful if the general recommendation addressed situations in which States perceived a conflict between cultural and religious requirements and their Convention obligations. Where States had instituted separate legal regimes for different religious or cultural groups, it was also not always clear that women from each of those groups were benefiting fully from the protections of the Convention. In that regard, therefore, it would be important for the general recommendation to underline that that cultural or religious difference was not a justification for failing to implement the Convention but rather that the Convention's guarantees must be realized within every cultural and religious context.

9. The general recommendation should address the question of the increasingly important role that macroeconomic policy-making was playing in determining whether the conditions existed at national levels to allow the implementation of the Convention. The recognition that individual States must respect the human rights obligations they had undertaken in the context of their actions affecting macroeconomic policy was of particular relevance for article 2. The Committee on Economic, Social and Cultural Rights had recognized in a general recommendation that States parties had an obligation to conduct their affairs in international macroeconomic forums in such a way as to ensure the realization of human rights. Article 2 (e) of the Convention on the Elimination of All Forms of Discrimination against Women would strongly support the Committee in taking a similar position. It would be helpful if the general recommendation advised not only that States parties must ensure that their own actions within international financial and trade institutions were consistent with the Convention but also that all parties to the Convention should be proactive in seeking to ensure that those organizations' policies did not have a discriminatory impact on women.

10. It would be helpful if the general recommendation reiterated the impermissibility of reservations to it, and called upon States that had entered such reservations to engage in constructive dialogue with the Committee with the aim of removing them.

11. The general recommendation might also provide the opportunity for the Committee to recall to States parties the nature and purpose of their concluding comments, and the importance of their attending to that guidance when attempting to identify the measures that it would be most appropriate to take in the national context.

12. **Ms. Raj** (International Women's Rights Action Watch Asia Pacific) said that the general recommendation must emphasize that the Convention placed obligations on States parties that were binding and that did not recognize internal law as an excuse for non-compliance. In terms of accountability, the State party had sole responsibility for acts of commission or omission by any organ of government, even in cases of federalism, separation of powers, decentralization or the existence of autonomous regions.

13. There was a need for conceptual clarity in framing elements of State obligation. By demanding the practical realization of rights, the Convention promoted the substantive, rather than merely formal, model of equality, which included equality of opportunity, equality of access to opportunity and equality of result or outcome. It was important to emphasize that protectionism was not equality, and in fact reproduced discrimination in the guise of protecting women. The general recommendation should state that equality was universal, and all women must be able to exercise the right to equality within the same country. It should make clear that States parties must address discrimination in spheres, as human rights were indivisible, interrelated and interdependent. Another element of State obligation was the need to have for States a clear understanding of discrimination as defined in article 1. Lastly, it must be made clear that the Convention applied to all women irrespective of their citizenship or nationality.

14. As for specific components of State obligation, in ratifying the Convention the State party undertook an obligation of means and an obligation of results. It was also required to fulfil both positive and negative obligations, being required both to refrain from engaging in discrimination and to adopt measures to achieve de facto equality. It was obligated to set in place some form of temporary special measures to help

correct the effects of past discrimination. An intersectional approach should be taken to discrimination, and the policy of eliminating discrimination must be pursued by "all appropriate means". Article 2 also stipulated that discrimination must be eliminated "without delay", which meant that lack of resources or low level of development were no excuse for delaying compliance. The obligations listed in article 2 highlighted the State party's main obligations to respect, protect and fulfil rights. They required the State party to refrain from interfering with the enjoyment of rights, to prevent violations of such rights by third parties and to take appropriate measures towards the full realization of women's equality. In cases where violations by private actors were of a gross, pervasive or persistent character and there was State inaction to prevent, investigate or provide redress, such State tolerance of the violation could lead to State accountability for its failure to exercise due diligence, and if the State justified those actions or excused them it would implicate it as being complicit in the violations or in condoning them. The State party was also obligated to remove impediments to women's equality based on discriminatory, cultural and traditional practices.

15. The legal framework to make the Convention applicable at the domestic level was critical. The obligation under article 2 (a) required a constitutional guarantee of equality in accordance with the standard of equality set by the Convention. It was imperative that the Convention be incorporated in the domestic legal framework of the State, and if that required enacting enabling legislation the State was obligated to do so. The enactment of an equality law that incorporated all elements of the Convention might also be the means by which the Convention was made applicable at the domestic level. The State party must establish mechanisms to monitor compliance with the Convention and to investigate, redress and prevent violations. In its international relations, the State party must refrain from entering into any discriminatory agreements, understandings or practices, and must continuously monitor and address the impact of international agreements on women. Developed countries had a particular obligation in that regard to provide aid to the less developed countries in fulfilling treaty obligations.

16. A section of the general recommendation should be devoted to special circumstances such as armed conflict, civil riots, natural disasters and economic crisis.

17. It was essential that an inter-ministerial institutional arrangement should be made to implement, monitor and evaluate progress in the implementation of the Convention; the role and responsibility of that institutional mechanism and of the national women's machinery, must be clearly designated. The arrangement should include a well-defined plan of action for the implementation of the Convention and the concluding comments and the allocation of adequate resources. In that connection, the State must take all responsibility for raising the awareness of society at large with regard to the rights of women under the Convention and a section of the general recommendation should be devoted to the kinds of data that had to be collected for the effective implementation of the plan. As States often pleaded helplessness in fulfilling their obligations, the general recommendation should identify and address stated obstacles. It should include a section on reporting obligations which spelled out the rationale for and purpose of reporting, and must also spell out the State's obligation to create an environment where NGO activism could take place freely.

18. **Ms. Mehra** (IWRAW Asia Pacific and Partners for Law in Development, India), noting that the Convention and its general recommendations to recognized contexts and identities, in addition to gender, contributed to discrimination against women, drew attention to the need to include and elaborate State obligations in the context of internal conflict and sectarian violence. Internal and sectarian conflict had become one of the most serious human rights challenges of the moment, replacing wars between States as the main source of displacement. In its general recommendation 19, the Committee had noted that war, armed conflict and occupation led to prostitution, trafficking and sexual assault, and had recommended measures to address the vulnerability caused. In the past, the Committee had intervened in individual cases of genocidal sectarian attacks and conflicts, the use of women's bodies as sites of war, and the absence of legal measures to address the problem.

19. The Committee was the only specialized body that could address the execution of gender-based violence and redress for it. Article 5 of the Convention recognized that social and cultural stereotyping of

women underpinned discrimination against them. It was that which made them sites of war and which was responsible for the long-term consequences of such violence. Women were placed in double jeopardy because of gender. They became subjected to violence because of it, and were stigmatized within the community because of the shame attached to the violence which made reparation and integration within the community tenuous. Neither the community nor the law had the capacity to address it. A vacuum existed within domestic law in that there was no appropriate definition within existing penal systems which captured the nature of the offence committed.

20. There were other reasons that made it absolutely imperative for the Committee to develop a framework of State obligations in relation to internal conflict for women. First, periodic reporting allowed early detection of the problem, stemmed its escalation and helped with redress. Second, such gross violations of women's human rights as those committed during internal conflicts had to be integrated into a constant review and clear framework to guide States on addressing and taking measures and being accountable internationally.

21. Article 2 defined State obligations to include affirmation through recognition, coupled with prohibition or injunction, as well as compliance by State/non-State actors and institutional mechanisms. Taking as an example the carnage against the Muslim minority population of the Indian State of Gujarat in March 2002, it was clear that there were huge gaps that needed to be filled and corrected through efforts at the international level. There were definitional challenges. The crimes that had been committed were a sequence of crimes just one component of which had been rape, and to prosecute them simply as rape was wholly inadequate. Applying multiple provisions, such as criminal restraint, grievous injury, assault to outrage modesty, rape and attempt to murder was also inadequate because a crime committed in such situations was one that went beyond inflicting injury on the individual. It was really an attack on an entire community involving the destruction of the spirit and dignity of that community. It was a crime against humanity in intent, and required an appropriate definition.

22. There was also a gap in the legal process. In spite of the large number of women and girls who were subjected to sexual assault before being killed, only one case had been prosecuted by the Supreme Court with special procedures implemented for the purpose in recognition of the fact that there was no appropriate legal procedure to prosecute such crimes fairly. The Supreme Court had therefore granted victim and witness protection as an exception.

23. There had been no State responsibility for organizing relief camps or support services; no sexual reproductive health services had been made available nor any post-trauma services. There had been a complete silencing of the problem by the community and the State. Life choices for women had been permanently and irreversibly curtailed, with young girls being forcibly married off and mobility in public curtailed as the community had sought to revive its dignity by enforcing cultural codes on women more stringently than before. In addition, economic destitution and the loss of breadwinners had meant that women had been forced into livelihood options for which they were not equipped, with no rehabilitation programme or support services in place to help them reintegrate and put their lives back together.

24. An important aspect of justice in internal conflict which addressed the harm and injury done both to the community and to the individual was that of reparations. In Gujarat, the albeit inadequate compensations announced had not included sexual injury as injury at all. Reparations was an important issue, and recognized as such by the Committee's general recommendation No. 19, which held State parties responsible for due diligence in preventing violence and providing compensation and fair trial.

25. **Ms. Udagama** (International Women's Rights Action Watch Asia Pacific and Centre for Human Rights, Law Faculty, University of Colombo, Sri Lanka), spoke of the heightened importance of the norms of human rights and humanitarian law during armed conflicts, most of which, in the modern world, involved fighting within, rather than between, States. Whether the cause of the conflict was ethnic or religious, gender-based violence took extreme forms and was perpetrated by State and non-State actors, and even by international peacekeeping forces, including the cases of military sexual slavery reported on by Radhika Coomaraswamy, former United Nations Special Rapporteur on Violence against Women (E/CN.4/1996/53/Add.1). Not only were the women on the "other side" subjected to rape, forced prostitution and other violations, but those of the perpetrators'

"own side" were condemned to traditional, patriarchal norms under the guise of "protection", as in Afghanistan under the Taliban. Conflicts also generated refugees and internally displaced persons (IDPs), most of whom were women and children. For the IDPs there was no specialized international agency to provide protection, making the principle of non-discrimination in their care and resettlement of paramount importance.

26. Social, economic and cultural rights were also violated more flagrantly during armed conflicts than in peacetime, with gender-based discrimination against female heads of households, war widows, IDPs and refugees in access to food, water, health care and education, especially when there were embargoes on food and medicines during armed conflicts. Women also needed protection from discrimination in the provision of credit, land and housing, and a role in policy-making with regard to resettlement, rehabilitation and reconciliation. Most formal peace processes offered no participation to women, an exclusion that had been recognized by the Security Council in adopting resolution 1325 (2000) on the role of women in the peace process.

27. Impunity remained a major obstacle to the promotion of human rights; the International Criminal Court held out some promise in that regard, but many States had yet to ratify the Rome Statute, and the Court's jurisdiction merely complemented national jurisdiction over the defined crimes against humanity, genocide and war crimes. It was important for States to recognize sexual crimes as being within those three categories, following the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda.

28. IWRAW AP's recommendations concerning States' obligations under article 2 of the Convention during armed conflicts were based on a recognition that international human rights law and international humanitarian law were complementary. States parties to the Convention were obliged to ensure that all possible measures were taken to prevent gender-based discrimination, especially sexual violence, from taking place during armed conflict, as already recognized in general recommendation No. 19. Such measures should include laws, particularly military codes, criminalizing sexual violence during armed conflicts, with definitions of such crimes at least as broad as those in applicable international legal norms; there should also be adequate judicial mechanisms, including military tribunals, to prosecute and punish perpetrators, adequate training for armed forces and military police, judges and civilian prosecutors to sensitize them to the issues arising in cases of sexual crimes during armed conflicts and measures to be applied against non-State actors involved as perpetrators, as under article 2 (e). States should moreover provide assistance to any international tribunal trying persons for crimes committed either in the territory of the State in question or elsewhere by one of its nationals. It was also important that national security legislation should not include provisions that violated the principles of human rights.

29. **Ms. MacKinnon** (Equality Now) pointed out the value of the Convention as an instrument which addressed the whole gamut of discrimination, from discriminatory laws right through to the lives of individual women. Violence against women, the subject of general recommendation No. 19, was a good example of that, since it was perpetrated against women as women, it imposed hierarchical, and therefore discriminatory, treatment on them, it took place at the crucial interface between the social and the legal spheres and States were held accountable for the realities of its effects. Article 2, as the implementation of the Convention, was the answer to the question of what it would take to eliminate discrimination and what exactly were the "appropriate means" to be pursued. Enormous as the task might be, the Committee should focus on each article in turn and through its general recommendations lay down the concrete steps to be taken; those should then be followed by oversight of States' implementation and by dialogue between States and the Committee. Such were the crucial steps necessary to make the provisions of the Convention effective in reality, and therein lay the Committee's strength. One example of that process in the sphere of violence against women was the series of sexual murders and disappearances in Ciudad Juárez, where the Mexican government had taken a variety of steps to address the problem, but until such time as the killing actually stopped, it could not be said that "all appropriate means" to end discrimination had been pursued. Principles were empty without implementation, and even correct implementation was not complete without follow-up. The Committee should seize the opportunity to remedy the fact that even though governments were often correctly motivated, they frequently simply did not know what

to do. The Convention was the right instrument, with the right focus, and the present time was the right moment to implement those practical ideas which conveyed the means to deliver tangible human rights to women, and pursue them until they were implemented effectively.

30. **Ms. Rudneva** (Kharkiv Centre for Women's Studies, Ukraine) stressed that the legal obligations of States parties to the Convention were not limited to article 2. The other articles, both those spelling out the broader obligations of States and those providing the substance and context in which States had to fulfil their obligations, meant that every aspect of women's lives was covered. All branches of government (executive, legislative and judiciary), and all public authorities, national, regional or local, shared that responsibility. Under article 2 (a), ratifying States were obliged to embody the principle of equality in their Constitutions or other laws; the experience of Ukraine showed that unless the definition of discrimination against women was incorporated into the Constitution or a separate law enacted on the promotion of gender equality, the judiciary would not cite discrimination as a legal term in court decisions. States parties must understand that once they ratified the Convention, it could be invoked in the national courts, depending on the relationship between international law and domestic law under their legal system and the receptivity of their courts to arguments grounded in international law. Despite the large number of countries in which treaties formed part of domestic law, there seemed to be relatively few cases in which the Convention had been invoked; in Ukraine, for instance, it had never been invoked. The Convention could and should have an impact on the interpretation and application of the law, and should be taken into account in the interpretation of a constitutional or statutory provision. Work with the courts and the judiciary in Ukraine had shown how important it was for national courts to take into account the views of United Nations human rights treaty bodies including the Committee, even if that meant reopening a case after conviction. The Codes of Criminal Procedure of Hungary and the Slovak Republic adopted that approach, and Ukraine's new Code of Criminal Procedure would follow suit.

31. Unlike other human rights treaties, the Convention was unique in obliging States to eliminate discrimination against women by any person, organization or enterprise, not just by State actors or agencies. States should ensure a balance between privacy related guarantees and the principle of non-discrimination.

32. **Ms. Kebriael** (Center for Reproductive Rights), speaking also for the Indiana Protection and Advocacy Services (IPAS), referred to the prohibition in article 1 of the Convention of discrimination in "purpose or effect", which was important because discrimination could result from supposedly "neutral" laws or policies, particularly in the context of reproductive rights. With regard to maternal mortality, for instance, government inaction in the face of widespread death during pregnancy and childbirth discriminated against women. Pursuant to article 2 (b), States parties should provide universal access to high-quality maternal health care for all and ensure that their policies achieved reductions in maternal mortality, especially for young and vulnerable women. Lack of adequate HIV/AIDS prevention policies caused greater harm to women and girls than to men, amounting to discrimination. States should take affirmative action to raise public awareness about the risks and effects of HIV/AIDS, especially in women and children, and should address the reasons why women were more vulnerable to the disease. Barriers to women's access to family planning and safe abortion services were discriminatory: women suffered most of the consequences of unwanted pregnancies, and pursuant to article 2 (b), (d), (f) and (g), States parties should allow abortion on broad grounds or without restriction. They should assure the accessibility of high-quality abortion and contraception services for all, with no requirement for third-party consent as well as ensure women's right to free and informed consent in contraceptive decisions. They should also repeal any national laws criminalizing abortion or punishing women for undergoing the procedure. Government inaction on female circumcision and female genital mutilation, consistently regarded as harmful practices violating women's right to their physical integrity, was clearly discriminatory. Pursuant to article 2 (f), States parties should ensure that national legal instruments protected women's and girls' right to freedom from such practices, and should undertake effective education and outreach programmes aimed at eliminating demand for the custom. States parties should ensure access to information and reproductive health services for all young people, married and unmarried, covering all aspects of sexuality. Lastly, punishing women for having illegal abortions or for

suffering stillbirths resulting from prenatal practices such as drug use amounted to criminalization of women on the basis of their reproductive capacity, which States parties should cease pursuant to article 2 (d) and (f).

33. **The Chairperson** said that all the statements made and documents submitted by non-governmental organizations (NGOs) were relevant to the Committee's work and would be taken into account during preparation of the general recommendation on article 2 of the Convention.

34. Many of the speakers had expressed the hope that the general recommendation would emphasize the primary responsibility of States Parties, at all levels of government, for implementation of the Convention. Mention had also been made of the need to understand discrimination against women and gender equality in substantive terms and to adopt a broad approach since article 2 was intrinsically linked to all the other articles of the Convention. It had been noted that the words "without delay" should be highlighted as a sign of the urgency of implementing the article's provisions and that emphasis should be placed on the need for States "to modify or abolish any discriminatory laws, regulations, customs and practices". The Convention should be interpreted as applicable to non-citizens resident in the State party in question. The general recommendation should also address the issue of reproductive rights and stress the State's responsibility to prevent violations of women's human rights during periods of armed conflict, including internal conflict.

35. **Ms. Schöpp-Schilling** said that she welcomed the input from NGOs and thanked the Division for the Advancement of Women for making the meeting possible.

36. It was clear from the discussion that the wording of all the provisions of article 2 must be carefully studied. A comprehensive approach was needed since, unlike other international human rights instruments developed under United Nations auspices, the Convention applied to "all forms of discrimination against women", including those not specifically mentioned therein; that point was particularly important in the context of reform of the treaty bodies.

37. Unlike the International Covenant on Economic, Social and Cultural Rights, the Convention called for States parties to take the necessary measures without delay, though it did not require that results be achieved immediately in all areas; however, that tension, which was especially clear in article 3 and article 5 (a), could not be used as an excuse not to begin the process of change. Legal reforms, at least, could be enacted quickly.

38. The general recommendation should address the issue of federalism and obligations under international law, which arose frequently in the context of States parties' reports. Each government believed that its form of federalism was unique and, while that might be true, a common understanding was needed.

39. Lastly, confusion regarding the distinction between sex and gender and between equality and equity often led to misguided policy-making; that problem should be raised in the general recommendation.

40. **Mr. Flinterman** said that the Committee needed to consider whether the general recommendation should be formulated in general terms, along the lines of the Human Rights Committee's general comment No. 28 on the equality of rights between men and women, or whether it should address a number of specific issues, such as reproductive rights and the rights of women during periods of armed conflict.

41. He agreed with the representative of UNIFEM that the Convention should have an impact on both the domestic and the international policies of States parties, but he would appreciate an explanation of her statement that developed countries were obligated to provide less developed countries with assistance in fulfilling their obligations under international conventions.

42. In his view, the general recommendation should state that international human rights law, including the Convention, and international humanitarian law were complementary although the latter might take precedence during periods of armed conflict and should stress that the Convention's provisions must be implemented even during such periods. However, he was not certain that the issue of women in armed conflict should be addressed in detail.

43. He would appreciate it if the representative of Equality Now would explain what was meant by the terms "positive equality" and "true equality". Lastly, while he agreed with Ms. Schöpp-Schilling that the Committee should clarify the difference between equity and equality and between sex and gender, it

might be best to do so in a separate general recommendation on each of those topics.

44. **Ms. Gabr** endorsed the proposal that the general recommendation should adopt a comprehensive approach, beginning with the need for States parties to amend their existing legislation or enact whatever new legislation was necessary to ensure full implementation of the Convention. Ms. Schöpp-Schilling had rightly noted that States often sought to evade their responsibilities by evoking their federal systems of government; it should therefore be stressed that the ultimate responsibility for implementation lay with the State itself.

45. Some speakers had mentioned the importance of follow-up and accountability. A number of States had formulated reservations to article 2 upon acceding to the Convention; a reference to the need for awareness-raising campaigns as a means of eliminating discriminatory stereotypes should be included in the general recommendation. Health issues, including that of violence against women (which was especially common during periods of international conflict) should also be raised; Security Council resolution 1325 (2000) on women, peace and security should be mentioned in that context.

46. The implementation of international trade conventions often had a negative impact on women. States which acceded to such instruments should be urged to ensure that social safety nets were in place.

47. Lastly, the International Commission of Jurists had been unable to participate in the meeting but had submitted a document which deserved the Committee's attention.

48. **Ms. Morvai** said she was disappointed that the International Commission of Jurists was not represented at the meeting and requested an explanation of its absence.

49. She asked the representatives of NGOs to comment on the extent to which the general recommendation should address the relationship between article 2 and all the other articles of the Convention and between article 2 and areas not explicitly mentioned in that instrument on the grounds that the title of the Convention referred to "all forms" of discrimination against women.

50. The issue of the reproductive rights of adolescent girls was a sensitive one; she wondered whether any research had been done on the gender realities of adolescent sexuality. It was not clear to what extent sexual relations between adolescents could be said to be fully consensual; moreover, the governments of many countries had sought to justify prostitution, pornography and sexual relations between girls as young as 12 and much older men on the grounds that such practices were part of their culture. She would also appreciate information on the effect of the growing sex and pornography industries on women and their reproductive rights.

51. **Ms. Šimonović** said that the general recommendation would provide an opportunity to interpret the wording of article 2 and to promote the development of the Convention as a leading human rights instrument. She therefore wondered whether it should speak only of "the equality of men and women" — the language used in article 2 (a) — or whether the principle underlying that provision justified the use of the term "gender equality". The decision taken on that point would determine whether the Convention was viewed as a temporary instrument that would become less important in the future or one of continuing importance in the field of gender and human rights.

52. **Ms. González Martínez** said that the NGOs' interest in the Committee's work was encouraging and that she appreciated the documentation provided.

53. She agreed that States' interpretation of federalism posed a problem and that international trade conventions could have a negative impact on women, as could economic restructuring agreements between States parties and the international financial institutions.

54. Article 2 was the "backbone" of the Convention in legal terms. By making States responsible for eliminating discrimination not only by State bodies, but also in the private sphere, it placed that instrument in the forefront of the human rights movement. However, it was important not to expand the scope of article 2, or of the other provisions of the Convention, beyond the intent of those who had drafted them.

55. **Ms. Shin** expressed interest in receiving information concerning the impact on women's lives of the macroeconomic programmes mandated by the Bretton Woods institutions and the regional financial institutions.

56. She asked the representatives of NGOs to comment further on the terms "equity" and "equality". The mention of equity in the eighth preambular paragraph of the Convention was made, not in the context of gender equity, but in that of the "new international economic order, based on equality and justice", which had been much discussed at the time when the Convention was being drafted. States parties, especially in Latin America, often preferred to use the term "equity"; the Committee had insisted that the goal of the Convention was equality, but she was not certain that that distinction should be made in the general recommendation.

57. It would also be useful to have information on cases where, after years of domestic violence, a woman killed her husband but was not permitted to enter a plea of self-defence.

58. **Ms. Belmihoub-Zerdani** noted that the reference to "the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity" in the tenth preambular paragraph to the Convention would appear to contradict the view that international humanitarian law took precedence over international human rights law during periods of armed conflict. The Beijing Platform for Action also included a reference to "the effects of armed or other kinds of conflict on women, including those living under foreign occupation".

59. The general recommendation should expand the Committee's interpretation of the Convention to include discrimination against women at the international level by making recommendations concerning situations of armed conflict in countries under occupation, such as Iraq and Palestine. The Committee should have the courage to undertake what men in the United Nations had not yet managed to do and should contribute to the development of international law by sending a monitoring mission to verify the implementation of the Convention, and especially the Preamble and article 2 thereof, in such situations.

60. **Ms. Tavares da Silva** said that the letter of the Convention addressed sex-based discrimination. In spirit, however, it also addressed gender-based discrimination, as was explicitly clear from the references in articles 2 and 5 respectively to the modification of social and cultural patterns of conduct and the modification or abolition of customs and practices which constituted discrimination against women. The general recommendation to be drafted on article 2 of the Convention should therefore reflect both dimensions.

61. **Ms. Achmad** said that emphasis should be placed on the leading role of the State in promptly encouraging non-State actors, in particular strategic stakeholders, to implement their obligations. Another matter of special concern was the need for comprehensive studies at the national level to identify the obstacles to implementation and also improve implementation, notably by furthering the understanding of the Convention with a view to ensuring that women's rights were recognized and respected. In that regard, she hoped that non-governmental organizations and the United Nations would provide the necessary support at the country level.

62. **Ms. MacKinnon** (Equality Now), responding to the question about the definition of positive equality, said that the term had been chosen as one which sufficiently embraced the distinctive concept of equality articulated in the Convention and rooted in the jurisprudence of the Committee, as in general recommendation No. 25, paragraph 29, for instance. In other words, an end to all forms of inequality was in itself equality inasmuch as women as a group would no longer have second-class legal and social status. Thereafter, it would be for the international community to decide whether any gender inequality issues remained. It was indeed the opposite of negative equality, bearing in mind that the Convention reframed the traditional equality approach; inter alia, it was not confined to legal and facial discrimination and discriminatory impact in the conventional legal sense; it signalled rejection of the traditional equality model; it showed that positive equality was not satisfied by treating all women equally but badly; and it also showed that a comparison of women and men in similar situations was not necessarily the most helpful legal approach, as in the cases of violence against women and reproductive rights.

63. **Ms. Rudneva** (Kharkiv Centre for Women's Studies), stressing the juridical importance of article 2 of the Convention, said that general recommendation No. 26 should contain the correct legal wording and enough detail to embrace topical issues, such as the

reproductive rights of women during periods of armed conflicts. In that connection, she reiterated that her delegation's earlier comments on the subject had been based on the experience of over 200 Ukrainian judges. Although the Convention remained as progressive today as when it was first drafted, the concept of gender equality was often misinterpreted by the judiciary. In order to avoid that eventuality, a more constructive approach would be to refer instead to the equality of men and women. The Convention formed an integral part of many national legislations. It was therefore crucial to ensure that article 2 was correctly interpreted by courts and legal experts.

64. **Ms. Udagama** (International Women's Rights Action Watch Asia Pacific) said that the general recommendation on article 2 of the Convention should be all-encompassing. It was therefore vital that it should incorporate a legal framework relating to the obligations of States during periods of conflict and internal conflict, in which regard a separate general recommendation would be appropriate only in order to elaborate upon that framework. Her delegation was very keen to cooperate with the Committee on the subject. In that context, it would be more than happy to submit an expanded concept paper.

65. **Ms. Waldorf** (United Nations Development Fund for Women) said that, in the view of UNIFEM, the optimal approach to formulating the general recommendation might be to adopt a compromise between the level of abstraction displayed in the recent general recommendation of the Human Rights Committee and the broader scope proposed during the current discussion. It would otherwise be a daunting task to provide an extensive explanation of measures required under each article of the Convention, although it was important to provide concrete examples in areas where conceptual clarity was lacking.

66. **Ms. Kismodi** (World Health Organization) said that concrete examples were a useful, if not essential, aid to Governments and stakeholders in implementing the Convention and general recommendations, as well as the conclusions and general recommendations of the Committee. She added that a multi-country study by WHO on violence, including sexual violence against adolescents, had already produced some findings, which WHO would be pleased to share with the Committee.

67. **Ms. Imam** (United Nations Population Fund) endorsed the views of the two previous speakers; concrete examples were particularly helpful to those who were unaccustomed to working at a general level of abstraction in a specific field. In response to the question concerning the human rights obligations of developed States to provide international assistance and cooperation to developing States, she said that such obligations extended to territories where the former exercised any form of influence, responsibility and control. All voluntary aid commitments should additionally take into account the nature of the aid and the policies by which it was applied. It would also be helpful to interface with the work due to take place shortly on the United Nations Declaration on the Right to Development, taking into account women's rights. Lastly, she would be pleased to provide the Committee with copies of the executive summary of a report on international obligations, including the subject of aid and developed States, which had been produced by the International Council on Human Rights Policy.

68. **Ms. Katzire** (Center for Reproductive Rights), responding to the question on adolescent sexuality, highlighted two recent general recommendations of the Committee on the Rights of the Child concerning adolescent health and HIV/AIDS, both of which referred to the adolescent need for reproductive health care and family planning. More in-depth research was needed on exploitative sexual relationships involving adolescents, as was government action to end all sexual abuse and exploitation, including the enactment of criminal legislation and measures to stop the practice of child marriage. Similar action was also needed to cater to the health care and family planning needs of adolescents, whatever the context of their sexual relationships. The lack of such services could have a devastating effect on the rest of their lives.

69. **Ms. Mehra** (International Women's Rights Action Watch Asia Pacific), referring to the international aid obligations of developed countries, said that States parties to multilateral treaties such as the Convention had a mutual interest in ensuring that implementation was universal, failing which article 29, paragraph 1, of the Convention could be invoked. In that light, as parties to a multilateral treaty, States should also be under a positive obligation to provide assistance for the implementation of such treaty. Indeed, the preamble to the Convention cited mutual cooperation and mutual benefit as factors in the

BEST COPY AVAILABLE

creation of equality between women and men, in which case both internal and external policies should be consistent. Those same factors were also cited in the conventions of other treaty bodies. It was therefore her position that developed States were under obligation to provide assistance to less developed countries for the implementation of treaty obligations.

The meeting rose at 12.45 p.m.